IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1375 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDULAL C MAKWANA

Versus

BOCHANSVASI AKSHARPURSHOTTAM SANTHAS

Appearance:

MR NN PRAJAPATI for the Petitioner

MR NV ANJARIA for the Respondent

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 14/10/2002

ORAL JUDGEMENT

This Revision Application arises from the judgment and order dated 27th February, 1986 passed by the learned Assistant Judge, Rajkot at Gondal in Regular

Civil Appeal No.136/1983. The petitioner before this Court is the appellant - defendant.

The petitioner before this Court is the tenant of Godown no.7 (hereinafter referred to as 'the suit godown') being the part of the property known as 'Yagnabaug' situated at Gondal belonging to the plaintiff Trust. The suit godown was leased to the defendant for a monthly rent of Rs.48=00. The defendant had executed rent note (Ex.13) on 1st January, 1973 in favour of the administrator of the Trust. The defendant was in arrears of rent since 1st March, 1979. For recovery of rent for the period from 1st March, 1979 to 30th June, 1980 the Trust had filed Civil Suits Nos.206/1979, 55/1980 and 62/1980, which, at the relevant time, were pending before the concerned Courts. On 9th July, 1980 the plaintiff gave notice (Ex.9), whereunder, the tenancy of the defendant was terminated and the defendant was called upon to remit a sum of Rs.768=00 being the arrears of rent for the period from 1st March, 1979 to 30th June, 1980 and the cost of the notice. The said notice was duly served upon the defendant. However, the defendant did not respond to the said notice. Another notice (Ex.11) was given on 16th September, 1981. The said notice too was not responded to. The plaintiff filed Civil Suit No.221/1981 in the Court of Civil Judge (J.D.), Gondal and claimed a sum of Rs.720=00 being the amount of arrears of rent for the period from 1st July, 1980 to 30th September, 1981, mesne profits for the period from 1st October, 1981 to 31st October, 1981, cost of the notice and interest on the amount of arrears of rent and recovery of possession of the suit godown.

The suit was contested by the defendant by filing written statement (Ex.20). It was denied that the defendant was in arrears of rent. It was stated that the rent was paid to the plaintiff regularly by cheques but the plaintiff did not deposit the said cheques in the bank. It was also denied that the rent of the suit godown was Rs.48=00 per month. It was stated that the rent of the suit godown was Rs.40=00 per month. In addition, the defendant was paying Rs.5=00 municipal taxes and Rs.3=00 electricity charges.

The learned Judge was, under the judgment and order dated 30th August, 1983, pleased to hold that the defendant was the tenant in arrears of rent and to pass decree for possession and for recovery of the amount of arrears of rent. The learned Judge further directed the defendant to pay a sum of Rs.48=00 every month to the plaintiff till the defendant handed over the vacant

possession of the suit godown to the plaintiff.

Feeling aggrieved, the plaintiff preferred Civil Appeal No.136/1983 in the Court of Assistant Judge, Rajkot at Gondal. It was argued before the learned Assistant Judge that the suit ought to have been filed by all the trustees. Suit notice given by the administrator of the Trust was not a valid notice and that the suit filed by the administrator was not maintainable. Neither of the said contentions appealed to the learned Assistant Judge. The learned Judge was, under the impugned judgment and order dated 27th February, 1986, pleased to dismiss the appeal. Feeling aggrieved, the defendant has preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Rent Act').

The only ground which is raised before this Court is that the defendant was protected by Section 12(3)(b) of the Rent Act. The defendant had paid the amount of arrears of rent by the date of the judgment in the appeal. No decree for eviction, therefore, could have been passed against the defendant.

I am afraid, I can not accept the contention. Even if the defendant were protected by Section 12(3)(b) of the Rent Act, he forfeited right to such protection by not satisfying the conditions mentioned in the said Section 12(3)(b). In the present case, it is established that the rent for the suit godown was payable by the month; that the defendant was in arrears of rent for six months and more; that the defendant neglected to pay the arrears of rent within one month from the date of the receipt of the suit notice; and that there was no dispute regarding the amount of standard rent or permitted increases. In the circumstances, all the conditions stated in Section 12(3)(a) of the Rent Act stood satisfied. The case would, therefore, be governed by Section 12(3)(a) of the Rent Act and the decree for eviction should necessarily follow. In my view, both the Courts below have rightly passed the decree for possession against the defendant.

Even if I accept that the case was governed by Section 12(3)(b) of the Rent Act, in absence of a dispute as to the standard rent, with a view to availing of the protection under Section 12(3)(b) of the Rent Act, the defendant was required to deposit the amount of arrears of rent demanded in the Court before the first day of hearing and was also required to deposit the monthly rent

regularly in the Court thereafter. In the present case, it is admitted that the defendant did not pay the arrears of rent on the first day of hearing of the suit nor did he deposit the rent regularly every month thereafter. Even, pending the appeal before the Assistant Judge the defendant did not pay the monthly rent regularly until the date of the judgment. It is well settled that payment of rent at the fag end of the trial or the appeal is not sufficient to deny the decree for possession under Section 12(3)(b) of the Rent Act.

The contention that in view of amendment to Section 12(3)(b) of the Rent Act under Gujarat Act No.7 of 1985 the defendant was not required to make regular payment pending the suit/appeal is also not well founded. The Division Bench of this Court has, in the matter of BAI SAKARBAI DEVRAJ V/S. IBRAHIM ABDUL GANIBHAI PANKHIDA [1994(2) G.L.R. 1091], held that the Gujarat Act No.7 of 1985 is prospective in its application. In other words, the amended Section 12(3)(b) of the Rent Act shall apply to the cases instituted after the effective date of the Gujarat Act No.7 of 1985. In the present case, the suit was decreed long before the effective date of the said amendment. Hence, the suit would be governed by then prevalent Section 12(3)(b) of the Rent Act.

No other contention has been raised in this Revision Application. For the aforesaid reasons, the Revision Application is dismissed with costs. Rule is discharged. Interim stay stands vacated.

(Ms. R.M. Doshit, J.)

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